आयकर अपीलीय अधिकरण, ''बी'' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री अब्राहम पी. जॉर्ज, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष
Before Shri Abraham P. George, Accountant Member &
Shri Duvvuru RL Reddy, Judicial Member

आयकर अपील सं./**I T.A. No. 09/Chny/2017**
निर्धारण वर्ष/**Assessment Year:2012-13**

M/s. Avvai Village Welfare Society, 260, Public Office Road, Velipalayam, Nagapattinam – 611 001. **[PAN: AAATA3067H]**	Vs.	The Income Tax Officer, Exemptions Ward, Thiruchirapalli.
(**अपीलार्थी /Appellant**)		(**प्रत्यर्थी/Respondent**)

आयकर अपील सं./**I T.A. No. 36/Chny/2017**
निर्धारण वर्ष/**Assessment Year:2012-13**

The Income Tax Officer, Exemptions Ward, Thiruchirapalli.	Vs.	M/s. Avvai Village Welfare Society, 260, Public Office Road, Velipalayam, Nagapattinam – 611 001.
(**अपीलार्थी /Appellant**)		(**प्रत्यर्थी/Respondent**)

अपीलार्थी की ओर से / Assessee by	:	Shri S. Senthamarai Kannan, Advocate
प्रत्यर्थी की ओर से/ Department by	:	Mrs. Ruby George, CIT
सुनवाई की तारीख/ Date of hearing	:	16.08.2018
घोषणा की तारीख /Date of Pronouncement	:	08.10.2018

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

Both the cross appeals filed by the assessee as well as Revenue are directed against the order of the ld. Commissioner of Income Tax (Appeals) 2, Tiruchirappalli dated 04.11.2016 relevant to the assessment year 2012-13. The assessee has raised two effective grounds viz., (i) the

ld. CIT(A) has erred in confirming the disallowance of ₹.26,000/- being rent paid and (ii) the ld. CIT(A) has erred in confirming 50% [₹.4,47,500/-] of salary paid to the Secretary of the society. The Department also raised two effective grounds viz., (i) the ld. CIT(A) has erred in not appreciating that the micro finance and insurance come under the last limb of the charitable purpose mentioned under section 2(15) of the Act and (ii) the ld. CIT(A) has erred in holding that the violation committed by the assessee by spending more than 50% towards administrative expenses does not have any implication with Income Tax Law.

2. Brief facts of the case are that the assessee society was formed on 06.02.1978 and registration under section 12A(a) of the Income Tax Act, 1961 ["Act" in short] was granted vide order dated 15.03.1989. The return of income was filed on 31.03.2013 showing NIL income after claiming exemption under section 11 of the Act. After considering the submissions and details furnished by the assessee, the assessment was completed under section 143(3) of the Act by holding that since the assessee was carrying out micro finance activity, which attracts provisions of section 2(15) of the Act as well as relying on the decision in the case of Socio Economic Development Society vs. ITO [2011-TIOL-754-ITAT-Mad] and Janalakshmi Social Services v. DIT (E) 33 SOT 197 (Bang), the

Assessing Officer denied exemption under section 11 of the Act and assessed the total income of the assessee at ₹.4,54,54,087/- after making various disallowances.

3. The assessee carried the matter in appeal before the ld. CIT(A). After considering the submissions of the assessee on various issues, the ld. CIT(A) partly allowed the appeal of the assessee against which, both the assessee as well as Revenue are in appeal before the Tribunal. .

4. In its appeal, the Department challenged that the micro finance and insurance come under the last limb of the charitable purpose mentioned in section 2(15) of the Act and as per the decisions of the Tribunal in various cases it was held that the micro finance activities are held to be commercial in nature and therefore, the assessee society is not eligible for claiming exemption. It was also submitted that the assessee received service charges and commission from HDFC and other financial institutions for the service rendered and therefore, there was no charitable activity involved and it was purely commercial in nature. By relying on the decision in the cases of Socio Economic Development Association v. ITO [(2011)-TIOL-754-ITAT-Mad] and ITO v. Kalanjiam Development Financial Services 64 taxmann.com 25 (Chennai – Trib), wherein, micro

finance activities are held to be “commercial” in nature, the ld. DR has submitted that the ld. CIT(A) has not given any findings with regard to eligibility of claiming exemption under section 11 of the Act except dealing with ceiling limit under section 2(15) of the Act at para 4.16 and pleaded that the issue may be remitted back to the file of the ld. CIT(A) for adjudication and passing speaking order. On the other hand, the ld. Counsel for the assessee relied on the order passed by the ld. CIT(A).

5. We have heard both sides, perused the materials available on record and gone through the orders of authorities below as well as paper books filed by the assessee. The Assessing Officer noticed that under the head ‘Micro credit programme’, the assessee has created one more section 25 company in the name of Namadhu Deepam Micro Financial Services, through which the loans received are distributed and collected. The assessee society has received service charges amounting to ₹.6,63,015/-. Further, the Assessing Officer observed that the Secretary of the Society Shri M. Krishnakumar has received salary from Namadhu Deepam Micro Financial Services amounting to ₹.1,25,000/- and moreover, he was holding 7.24% of the shares. Thus, the Assessing Officer held that the mere service of facilitating loan to its members, the assessee received service charges amounting to ₹.6,63,015/- proves that

the assessee was doing only commercial activity, i.e., acting as business correspondent of HDFC Bank, which was not the original object of the society. Further, the Assessing Officer noticed that the assessee society provided services to the SHGs in the name of 'charity' by collecting service charges and higher interest from them for managing its own expenses. Though the assessee claims that it was offering services to the poor, the Assessing Officer observed that no services were provided to the poorer on 'free of cost'. Therefore, by invoking the provisions of section 2(15) r.w.s. 13(8) of the Act, the Assessing Officer denied the claim of exemption under section 11 of the Act. However, in the appellate order, the ld. CIT(A) has not given any findings as to whether the assessee is eligible to claim exemption under section 11 of the Act since the assessee was carrying out micro finance activity. Under the above facts and circumstances, we remit the issue to the file of the ld. CIT(A) for adjudication and passing detailed speaking order keeping in mind the decisions of the Tribunal as relied on by the ld. DR. Thus, the ground raised by the Revenue is allowed for statistical purposes.

6. The next ground raised by the Revenue is that the ld. CIT(A) has erred in holding that the violation committed by the assessee society by spending more than 50% towards administrative expenses does not have

any implication with Income Tax Law. Under GIZ Adapt Cap programme, the Assessing Officer noticed that the administrative expenses claimed by the assessee works out to 95.40% of the total expenses of ₹.35,05,692/-. The above claim of the assessee is a clear violation of Foreign Contribution Regulations Rules, 2011, wherein, it was defined that not more than 50% of the foreign contribution shall be defrayed to meet administrative expenses of the Association. Against which, after considering the submissions of the assessee, the ld. CIT(A) held that the deficiency of violation of Foreign Contribution Regulation Rules, 2011, wherein, it is defined that not more than 50% of the foreign contribution shall be defrayed to meet administrative expenses of the Association does not have any implication with income tax law.

6.1 By relying upon the decision of the Hon'ble Supreme Court in the case of Maddi Venataraman & CO. (P.) Ltd. v. CIT 229 ITR 534, the ld. DR submitted that the ld. CIT(A) was incorrect in holding that the violation committed by the assessee society by spending more than 50% towards administrative expenses does not have any implication with Income Tax Law.

6.2 We have considered the rival submissions and gone through the orders of authorities below. We have also gone through the case law relied on by the ld. DR, in the case of Maddi Venataraman & CO. (P.) Ltd. v. CIT (supra), wherein, the Hon'ble Apex Court has held that it is against the public policy to allow the benefit of deduction under one statute of any expenditure incurred in violation of the provisions of another statute. In view of the above decision of the Hon'ble Supreme Court, we find that the assessee has clearly violated the Foreign Contribution Regulations Rules, 2011 and thus, the ground raised by the Revenue is allowed.

7. The first ground raised in the appeal of the assessee is with regard to the rent paid by the assessee society to its accountant. The Assessing Officer observed from the details of expenditures of the assessee that the assessee has paid ₹.26,000/- as rent to its own accountant Shri Ashok. It was further observed that when the trust is already having its own building in the address and the said programme is to be carried out basically in coastal areas, the need for a separate rental building to be maintained as office does not arise at all. Notwithstanding this fact, the Assessing Officer held that the payment made to the accountant of the organization cannot be accepted as towards rent as claimed by the

assessee. After considering the submissions of the assessee, the ld. CIT(A) sustained the addition.

7.1 We have considered the rival submissions. By referring to the written submissions as well as financial statement as duly agreed and signed for by the foreign counterpart, the assessee-society has made provision of ₹. 30,000/- for office rent and electricity charges. It was further submitted that in order to maintain separate records and personnel pertaining the foreign aided GIZ project, the assessee has opened separate office and paid rent of ₹.26,000/-. Since the owner of the building insisted the rent in cash, the Financial Controller of the Society drew a cheque in his own favour, encashed the same and paid the same to the building owner. Moreover, it was submitted that the said rent was not paid from the resources of the society. On perusal of the appellate order, we find that without asking any details from the assessee, the ld. CIT(A) has simply sustained the addition. We find that the provision made for rental was duly agreed by the concern agency and accordingly, out of the foreign fund, the said expenditure was met out as contended by the assessee in its written submissions that the said rent was not paid from the assessee's fund. In view of the above facts, the addition made and sustained by the ld. CIT(A) stands deleted.

8. The next ground raised in the appeal of the assessee is that the ld. CIT(A) has erred in confirming 50% [₹.4,47,500/-] of the salary paid to the Secretary of the assessee society against the disallowance made by the Assessing officer. After considering the submissions of the AR of the assessee as well as facts of the case, the ld. CIT(A) has observed that when the Assessing officer has taken the entire receipt of the assessee as income of the assessee society and after having allowed only three expenses viz., administrative expenses of ₹.12,671/-, Bank charges of ₹.2,683/- and interest paid to Bank of ₹.7,80,728/-, there was no necessity to add the salary paid to the Secretary again, as the same has not included in any of the three expenses allowed by the Assessing Officer.

8.1 We have considered the rival submissions, gone through the orders of authorities below as well as written submissions of the assessee including paper book. By considering the qualification, experience, etc. and since the Assessing Officer has not allowed any reasonable portion of salary claimed to have paid to the Secretary, the ld. CIT(A) has reasonably allowed 50% of the disallowance of salary paid to the secretary and the balance was rightly sustained. The above allowance of 50% of salary to the Secretary by the ld. CIT(A) was not at all disputed by

the Department in its appeal before the Tribunal, we find no reason to interfere with the order passed by the ld. CIT(A) and accordingly, the ground raised by the assessee stands dismissed.

9. In the result, the appeal filed by the Revenue is partly allowed for statistical purposes and the appeal filed by the assessee is partly allowed.

Order pronounced on the 08th October, 2018 at Chennai.

Sd/-	Sd/-
(ABRAHAM P. GEORGE)	(DUVVURU RL REDDY)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Chennai, Dated, the 08.10.2018

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2.प्रत्यर्थी/ Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.